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Attorneys for Defendants ADVANTAGE FINANCIAL, INC.
DEFINED BENEFIT PLAN; ADVANTAGE FINANCIAL, INC.;
And NORMAN JOHN EXLINE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAMELA FASTABEND

Plaintiff,

v.

ADVANTAGE FINANCIAL, INC.
DEFINED BENEFIT PLAN;
ADVANTAGE FINANCIAL, INC.;
and NORMAN JOHN EXLINE

Defendants.

No. C07-5498-BZ

ANSWER OF ADVANTAGE
FINANCIAL, INC. DEFINED
BENEFIT PLAN; ADVANTAGE
FINANCIAL, INC.;
and NORMAN JOHN EXLINE

Defendants ADVANTAGE FINANCIAL, INC. DEFINED
BENEFIT PLAN; ADVANTAGE FINANCIAL, INC.; and NORMAN JOHN EXLINE
answer the complaint on file herein as follows:

ANSWER TO GENERAL ALLEGATIONS

1. In response to paragraph 1 of the complaint Defendants admit the
allegations therein.

2. In response to paragraph 2 of the complaint Defendants admit the
allegations therein. 3. In response to paragraph 3 of the complaint Defendants admit
the allegations therein.

4. In response to paragraph 4 of the complaint Defendants admit the
allegations therein.

1 5. In response to paragraph 5 of the complaint Defendants admit that the Plan
2 Administrator was an administrator with respect to the Plan and within the meaning of 29
3 U.S.C. Section 1002(16)A)(I) and that the Plan Administrator is a resident and citizen of
4 Contra Costa County, California. Except as so admitted, Defendants deny each and
5 every allegation contained in said paragraph.

6 6. In response to paragraph 6 of the complaint Defendants admit the
7 allegations therein.

8 **ANSWER TO FIRST CLAIM OF RELIEF**

9 7. In response to paragraph 7 of the complaint, Defendants incorporate by
10 reference the responses set forth in Paragraphs 1 through 6 of this Answer as though they
11 were fully set forth herein.

12 8. In response to paragraph 8 of the complaint, Defendants admit the
13 allegations therein.

14 9. In response to paragraph 9 of the complaint, Defendants admit the
15 allegations therein.

16 10. In response to paragraph 10 of the complaint, Defendants admit that on
17 December 12, 2005 Plaintiff completed and signed a direct Rollover Form a copy of
18 which is attached to the complaint herein as Exhibit 3. Except as so admitted,
19 Defendants deny each and every allegation contained in said paragraph.

20 11. In response to paragraph 11 of the complaint, Defendants admit the
21 allegations therein.

22 12. In response to paragraph 12 of the complaint, Defendants admit the
23 allegations contained therein.

24 13. In response to paragraph 13, Defendants are without sufficient knowledge
25 or information to form a belief as to the truth of the allegations contained in said
26 paragraph, and on that basis deny each and every allegation contained therein.

27 14. In response to paragraph 14 of the complaint, Defendants deny each and
28 every allegation contained therein.

1 15. In response to paragraph 15 of the complaint, Defendants deny each and
2 every allegation contained therein.

3 16. In response to paragraph 16, Defendants are without sufficient knowledge
4 or information to form a belief as to the truth of the allegations contained in said
5 paragraph, and on that basis deny each and every allegation contained therein.

6 17. In response to paragraph 17 of the complaint, Defendants deny each and
7 every allegation contained therein.

8 18. In response to paragraph 18 of the complaint, Defendants admit that
9 Plaintiff has retained an attorney in San Ramon, California for the purpose of asserting
10 her ERISA claims. Except as so admitted, Defendants deny each and every allegation
11 contained in said paragraph.

12 **ANSWER TO SECOND CLAIM FOR RELIEF**

13 19. In response to paragraph 19 of the complaint, Defendants incorporate by
14 reference the responses set forth in Paragraphs 1 through 18 of this Answer as though
15 they were fully set forth herein.

16 20. In response to paragraph 20 of the complaint, Defendants deny each and
17 every allegation contained therein.

18 **ANSWER TO THIRD CLAIM FOR RELIEF**

19 21. In response to paragraph 21 of the complaint, Defendants Plan Sponsor and
20 Plan Administrator incorporate by reference the responses set forth in Paragraphs 1
21 through 20 of this Answer as though they were fully set forth herein.

22 22. In response to paragraph 22 of the complaint, Defendants Plan Sponsor and
23 Plan Administrator admit the allegations contained therein.

24 23. In response to paragraph 23 of the complaint, Defendants Plan Sponsor and
25 Plan Administrator admit the allegations contained therein.

26 24. In response to paragraph 24 of the complaint, Defendants Plan Sponsor
27 and Plan Administrator deny each and every allegation contained therein.

28 25. In response to paragraph 25 of the complaint, Defendants Plan Sponsor and

1 Plan Administrator admit they were obliged to discharge their duties to the Plan as
2 fiduciaries. Except as so admitted, Defendants deny each and every allegation contained
3 in said paragraph.

4 26. In response to paragraph 26 of the complaint, Defendants admit that they
5 were deny each and every allegation contained therein.

6 27. In response to paragraph 27 of the complaint, Defendants Plan Sponsor and
7 Plan Administrator admit they were obliged to discharge their duties to the Plan as
8 fiduciaries. Except as so admitted, Defendants deny each and every allegation contained
9 in said paragraph.

10 28. In response to paragraph 28 of the complaint, Defendants Plan Sponsor and
11 Plan Administrator deny each and every allegation contained therein.

12 29. In response to paragraph 29 of the complaint, Defendants deny each and
13 every allegation contained therein.

14 **ANSWER TO FOURTH CLAIM FOR RELIEF**

15 30. In response to paragraph 30 of the Defendants Plan Sponsor and Plan
16 Administrator incorporate by reference the responses set forth in Paragraphs 1 through 29
17 of this Answer as though they were fully set forth herein.

18 31. In response to paragraph 31 of the complaint, Defendants Plan Sponsor and
19 Plan Administrator deny each and every allegation contained therein.

20 32. In response to paragraph 32 of the complaint, Defendants deny each and
21 every allegation contained therein.

22 33. In response to paragraph 33 of the complaint, Defendants deny each and
23 every allegation contained therein.

24 34. In response to paragraph 34 of the complaint, Defendants deny each and
25 every allegation contained therein.

26 **ANSWER TO FIFTH CLAIM FOR RELIEF**

27 35. In response to paragraph 35 of the Defendants incorporate by reference the
28 responses set forth in Paragraphs 1 through 34 of this Answer as though they were fully

1 set forth herein.

2 36. In response to paragraph 36 of the complaint, Defendants Plan Sponsor and
3 Plan Administrator deny each and every allegation contained therein.

4 37. In response to paragraph 37 of the complaint, Defendants deny each and
5 every allegation contained therein.

6 38. In response to paragraph 38 of the complaint, Defendants deny each and
7 every allegation contained therein.

8 FIRST AFFIRMATIVE DEFENSE

9 The complaint, and each cause of action therein, is barred by the doctrine of laches
10 because Plaintiff unreasonably delayed in bringing this action to the prejudice of these
11 answering Defendants.

12 SECOND AFFIRMATIVE DEFENSE

13 The complaint, and each cause of action therein, is barred and Plaintiff is estopped
14 from obtaining any recovery from these answering Defendants.

15 THIRD AFFIRMATIVE DEFENSE

16 Plaintiff failed and neglected to use reasonable care to minimize and mitigate the
17 losses, injuries and damages complained of, if any there are.

18 FOURTH AFFIRMATIVE DEFENSE

19 The complaint is barred and fails to state a cause of action against these answering
20 Defendants in that Plaintiff failed to give timely and proper notice.

21 FIFTH AFFIRMATIVE DEFENSE

22 At all times alleged in the complaint, Defendant acted in good faith and had
23 reasonable grounds to believe its conduct was not unlawful, if in fact it was.

24 SIXTH AFFIRMATIVE DEFENSE

25 The claims asserted by Plaintiff were duly released and waived pursuant to a
26 written Release executed by Plaintiff on or about August 5, 2005.

27
28 WHEREFORE, Defendant requests judgment as follows:

1. That Plaintiff take nothing by reason of the Complaint;
2. That the Complaint be dismissed with prejudice;
3. For costs of suit incurred herein;
4. For reasonable attorney's fees; and
5. For such other and further relief as the Court may deem just and proper.

Dated: December 31, 2007

SEIBEL & FINTA

Brian D. Seibel, Attorneys for Defendants,
ADVANTAGE FINANCIAL, INC.
DEFINED BENEFIT PLAN; ADVANTAGE
FINANCIAL, INC.; and NORMAN JOHN
EXLINE

PROOF OF SERVICE

I hereby declare under penalty of perjury that I am a citizen of the United States and over the age of eighteen years, that I am not a party to the within action, and that my business address is 1850 Mt. Diablo Blvd., Suite 650, Walnut Creek, California 94596.

On December 31, 2007, I served the following documents

ANSWER OF ADVANTAGE FINANCIAL, INC. DEFINED
BENEFIT PLAN; ADVANTAGE FINANCIAL, INC.;
and NORMAN JOHN EXLINE

on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Robert R. Pohls, Esq.
Pohls & Associates
12657 Alcosta Boulevard, Suite 150
San Ramon, California 94583
Facsimile No. (925) 973-0330

XX (By Mail) I deposited such envelope in the mail at Walnut Creek, California. The envelope was mailed with postage thereon fully prepaid.

☐ (By Mail) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Walnut Creek, California, in the ordinary course of business.

☐ (By Certified Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Certified mail Return Receipt Requested at Walnut Creek, California.

☐ (By Overnight Delivery) I deposited such envelope in the United Parcel Service depository at Walnut Creek, California. The envelope was sent with delivery charges thereon fully prepaid.

☐ (By Facsimile) I caused each document to be delivered by electronic facsimile to the offices listed above.

XX (Federal) I declare, under penalty of perjury, under the laws of the United States of America, that the foregoing information contained in the Declaration of Service is true and correct.

Executed on December 31, 2007, at Walnut Creek, California.

BRIAN D. SEIBEL